

Environmental Protection Agency

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factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.

(c) Where appropriate, the Administrator will make rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

§ 178.35 Modification or revocation of regulation.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation in question should be modified or revoked, the Administrator will by order publish appropriate rulemaking documents in the FEDERAL REGISTER.

(b) The Administrator will provide an opportunity for objections and requests for hearing on such rule to the extent required by law. Such objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§ 178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the FEDERAL REGISTER an order under FFDCA section 408(d)(5) or 409(f)(1) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order also must state the reason for that denial (e.g., why the request for a hearing did not conform to § 178.27, or

why the request was denied under § 178.32).

(c) Each order published under paragraph (a) of this section must state its effective date, which must not be earlier than the 90th day after the order is published unless the order contains the Administrator's findings as to the existence of emergency conditions that necessitate an earlier effective date.

Subpart C [Reserved]

Subpart D—Judicial Review

§ 178.65 Judicial review.

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

§ 178.70 Administrative record.

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under § 178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

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(4) Any order issued under §180.7(g) of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under §180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(6) Any comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, any data or information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(7) All other documents or information submitted to the docket for the rulemaking in question.

(8) The order issued under §178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under §178.37.

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AUTHORITY: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

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Subpart A—General Provisions

§179.3 Definitions.

Administrator means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

Agency means the United States Environmental Protection Agency.